

# UNOFFICIAL COPY

Doc#: 1724146195 Fee: \$62.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/29/2017 10:45 AM Pg: 1 of 8

Prepared by:

Timm & Garfinkel, LLC  
770 Lake Cook Road, Suite 150  
Deerfield, IL 60015  
Attention: Glenn Garfinkel

Upon Recording  
Return to:

Bryan Cave LLP  
161 North Clark Street, Suite 4300  
Chicago, IL 60601  
Attention: Simone Randolph

## NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into as of the date of the last signatory hereto, by and between RAISING CANE'S RESTAURANTS, L.L.C., a Louisiana limited liability company ("Tenant"), and THE PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank ("Lender"), and STONY CREEK RAISING CANE'S LLC, An Illinois limited liability company ("Landlord").

### RECITALS:

WHEREAS, Landlord, as assignee of Stony Creek LLC, a Delaware limited liability company, and Tenant are parties to that certain Reverse Build to Suit Lease dated as of September 25, 2015, as amended by First Amendment to Reverse Build to Suit Lease dated May 27, 2016 (the "Lease"), a memorandum of which was recorded on August 29, 2017, as Document Number 1724147053, in the office of the recorder of deeds of Cook County, Illinois, covering a certain Premises therein described located on a parcel of real estate, a legal description of which is attached hereto and incorporated herein by this reference as Exhibit A (said parcel of real estate and the Premises being sometimes collectively referred to herein as the "Property"); and

WHEREAS, Landlord has executed a Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (the "Mortgage") dated August 16, 2017 and recorded on August 28, 2017 as Document Number 1724008024 in the office of the recorder of deeds of Cook County, State of Illinois, in favor of Lender, payable upon the terms and conditions described therein; and

WHEREAS, it is a condition to the Mortgage that the Mortgage shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the Lease and to the leasehold estate created thereby; and

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WHEREAS, the parties hereto desire to assure Tenant's possession and control of the Property under the Lease upon the terms and conditions therein contained;

NOW, THEREFORE, for and in consideration of the mutual covenants and premises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

## AGREEMENT:

1. The Lease is and shall be subject and subordinate to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all future advances made thereunder.
2. Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage which encumbers the Property, or should the Property be transferred by deed in lieu of foreclosure (dation en paiement or giving in payment), or should any portion of the Property be sold under a trustee's sale, the Lease shall continue in full force and effect as a direct lease between the then owner of the Property resulting from the enforcement of the Mortgage and Tenant, upon, and subject to, all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including any extensions therein provided, and so long as Tenant is not in default under the terms of the Lease, Tenant's occupancy of the Property shall not be disturbed. Tenant does hereby agree to attorn to Lender or to any such owner as its landlord, and Lender hereby agrees that it will accept such attornment.
3. Notwithstanding any other provision of this Agreement, Lender shall not be (a) liable for any default of any landlord under the Lease (including Landlord), except that Lender agrees to cure any default of Landlord that occurs or continues uncured from and after the date Lender forecloses the Property within thirty (30) days from the date Tenant delivers written notice to Lender of such continuing default, unless such default is of such a nature to reasonably require more than thirty (30) days to cure and then Lender shall be permitted such additional time as is reasonably necessary to effect such cure, provided Lender diligently and continuously proceeds to cure such default; (b) subject to any offsets or defenses which have accrued prior to the date of foreclosure, unless Tenant shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted Landlord under the Lease; (c) bound by any rent that Tenant may have paid under the Lease more than one (1) month in advance; (d) bound by any amendment or modification of the Lease hereafter made without Lender's prior written consent; and (e) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender.
4. If Lender sends written notice to Tenant to direct its rent payments under the Lease to Lender instead of Landlord, then Tenant agrees to follow the instructions set forth in such written instructions and deliver rent payments to Lender; however, Landlord and Lender agree that

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Tenant shall be credited under the Lease for any rent payments sent to Lender pursuant to such written notice.

5. All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by overnight courier delivery, by certified or registered U.S. mail, postage prepaid, return receipt requested, or by electronic mail (provided that delivery by one of the other permitted methods is also made) and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above:

Tenant: Raising Cane's Restaurants, L.L.C.  
6800 Bishop Road  
Plano, TX 75024  
Attn: Real Estate Department  
Email: [realestate@raisingcanes.com](mailto:realestate@raisingcanes.com)  
Re: RC #256

With a copy to: Dawn M. Rawls, Esq.  
Rawls Law Firm, PLLC  
315 S. Jupiter Road, Suite 200  
Allen, TX 75002  
email: [dawr@rawlslaw.com](mailto:dawr@rawlslaw.com)  
Re: RC#256

Lender: The PrivateBank and Trust Company  
120 South LaSalle Street  
Chicago, IL 60603  
Attn: Manager, Real Estate Administration

Landlord: Stony Creek Raising Cane's LLC  
c/o Hamilton Partners  
300 Park Boulevard, Suite 201  
Itasca, IL 60143  
Attention: Paul Sheridan  
email: [plsherid@hamiltonpartners.com](mailto:plsherid@hamiltonpartners.com)

With a copy to: Timm & Garfinkel, LLC  
770 Lake Cook Road, Suite 150  
Deerfield, IL 60015  
Attention: Glenn Garfinkel  
Email: [ggarfinkel@ltglegal.com](mailto:ggarfinkel@ltglegal.com)

All notices delivered as set forth above shall be deemed effective three (3) days from the date deposited in the U.S. mail or the business day after deposit with the overnight courier service or upon receipt if by electronic mail (so long as the other method of delivery is also made).

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6. Said Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of Tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Property. In the event the Property or any part thereof shall be taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of the parties to any condemnation award or insurance proceeds shall be determined and controlled by the applicable provisions of the Lease.

7. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Mortgage.

8. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

9. Tenant shall not be joined as a party/defendant in any action or proceeding which may be instituted or taken by reason of any default by Landlord in the performance of the terms, covenants, conditions and agreements set forth in the Mortgage.

[SIGNATURES ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, Lender has caused this Non-Disturbance and Attornment Agreement to be executed on the 14<sup>th</sup> day of August, 2017.

LENDER:

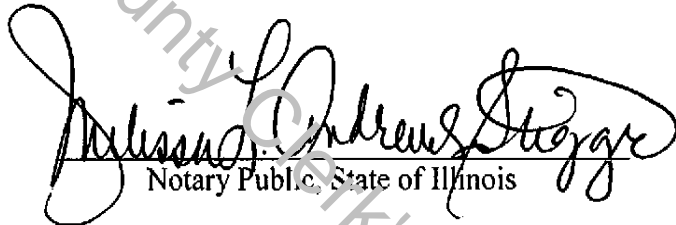
THE PRIVATEBANK AND TRUST COMPANY,  
an Illinois state chartered bank

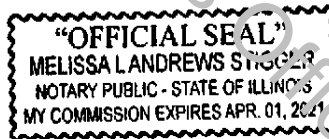
By:   
Name: Mark C. Spears  
Title: Managing Director

STATE OF ILLINOIS

COUNTY OF COOK

BEFORE ME, the undersigned authority, on this 14<sup>th</sup> day of August, 2017, did personally appear Mark C. Spears, managing director of The Private Bank and Trust Company, an Illinois state chartered bank, who acknowledged this instrument and stated that he executed same on behalf of company.

  
Notary Public, State of Illinois



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IN WITNESS WHEREOF, Tenant has caused this Non-Disturbance and Attornment Agreement to be executed on the 28<sup>th</sup> day of February, 2017.

TENANT:

RAISING CANE'S RESTAURANTS, L.L.C.,  
a Louisiana limited liability company

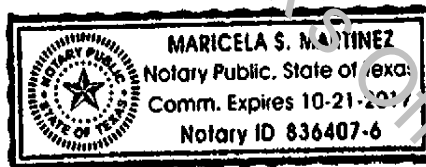
By: *Brad Sanders*  
Brad Sanders  
President

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this 28<sup>th</sup> day of February, 2017, did personally appear Brad Sanders, President of Raising Cane's Restaurants, L.L.C., a Louisiana limited liability company, who acknowledged this instrument and stated that he executed same on behalf of said limited liability company.

*Maricela S. Martinez*  
Notary Public, State of Texas



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IN WITNESS WHEREOF, Landlord has caused this Non-Disturbance and Attornment Agreement to be executed on the 14th day of April, 2017.

LANDLORD:

STONY CREEK RAISING CANE'S LLC,  
a Delaware limited liability company

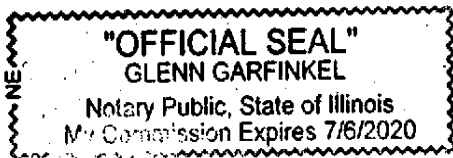
By: Stony Creek LLC,  
a Delaware limited liability company  
its sole member

By: HP Stony Creek LLC,  
an Illinois limited liability company,  
its manager

By: [Signature]  
Name: Paul Sheridan  
Title: Managing Member

STATE OF ILLINOIS §  
COUNTY OF LARE §

BEFORE ME, the undersigned authority, on this 14th day of April, 2017, did personally appear Paul Sheridan, the managing member of HP Stony Creek LLC, an Illinois limited liability company, the manager of Stony Creek LLC, a Delaware limited liability company, the sole member of Stony Creek Raising Cane's, LLC, an Illinois limited liability company, who acknowledged this instrument and stated that he executed same on behalf of said limited liability company.



[Signature]  
Notary Public, State of Illinois

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## Exhibit A To Non-Disturbance and Attornment Agreement

### LEGAL DESCRIPTION OF THE PROPERTY

Lot 2 in Stony Creek Promenade Phase 1, being a subdivision in part of the East Half of the Southeast Quarter of Section 16, Township 37 North, Range 13 East of the Third Principal Meridian, the plat of which was recorded July 27, 2015 as Document No. 1520834079.

Street Address: 11006 S. Cicero Avenue, Oak Lawn, IL 60453

PIN: 24-16-416-058

Property of Cook County Clerk's Office